XI-FC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

मामला क्रमांक Cr.A No. 943 सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: Pratap Gond, Son of Shri Viru Gond, aged about 54 years, resident of Village Bayanar, Police Station Bhanupratappur, District Kanker (M.P.) (now Chhattisgarh).

-Versus-

RESPONDENT: The State of Madhya Pradesh (now Chhattisgarh), through the Police Station Bhanupratappur, District Kanker.

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

19-7-2007:-

Shri Pankaj Shrivastava, counsel for the appellant.

Shri G.D. Vasvani, Govt. Advocate for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 22nd August, 2000 passed by the Additional Sessions Judge, Kanker, in S.T. No.152/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life. However, acquitted co-accused Sonau @ Sonu.

2. The case of the prosecution, in brief, is that Shiv Prasad, nephew of deceased Maluram gave merg intimation Ex.P/7 in the Police Station Bhanupratappur on 2-8-97 to the effect that on 30th July, 1997, Wednesday, at about 10 a.m. his uncle Maluram (since deceased) had gone to attend last rites ceremony in the house of Sonaram of village Bayanar, but till Thursday he did not return. Therefore, tomorrow i.e. Friday, whereabouts of Maluram was searched in village Bayanar but whereabouts could not be traced. Today morning he met Sarpanch, Patel and Kotwar of village Kanechur. Number of persons of village Kanechur went to village Bayanar and collected the villagers, at that time Chamraram, Kotwar of village Bayanar came and informed that the body of a person is lying in the water in Vyaparipara. It appears to be body of Maluram.

3. Receiving this report, merg No.22/97 was registered. Station House Officer, Police Station, Bhanupratappur, left for scene of occurrence, after giving notice Ex.P/2, prepared inquest Ex.P/3 on the body of Maluram. Clothes of the deceased were seized under Ex.P/4. Site plan Ex.P/5 was prepared. The body of Maluram was sent for post-mortem examination to the Community Health Centre, Bhanupratappur under Ex.P/8 where Dr. A.R. Gota (PW-12) conducted post-mortem, opined that cause of death was asphyxia as a result of strangulation and death was homicidal in nature. He prepared post-mortem report

मामला क्रमांक..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Ex.P/8-A. Based on that first information report Ex.-P/9 was registered.

4. After completion of the investigation, charge sheet was filed against the accused/appellant along with Sonau @ Sonu in the Court of Judicial Magistrate, 1st Class, Bhanupratappur, who in turn committed the case to the Sessions Judge Bastar from where learned Additional Sessions Judge received the case on transfer for trial.

5. In order to establish the charge against the accused persons the prosecution examined 13 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence, stated that they are innocent and have been falsely implicated in the crime.

6. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant as aforesaid. However, acquitted co-accused Sonau @ Sonu of the charge under Section 302 of the I.P.C.

7. We have heard Shri Pankaj Shrivastava, learned counsel for the appellant and Shri G.D. Vasvani, Govt. Advocate for the State/ respondent.

8. Having heard learned counsel for the parties, we have perused judgment of the trial Court as well as evidence available on record. We have no hesitation to come to a conclusion that in this case there is

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

not an iota of evidence to connect the accused with the crime in question. It appears that during investigation PW-1 Phoolbati, wife of the accused/appellant, informed that after attending last rites ceremony at Bayanar, the appellant along with Sonau and deceased Maluram came to the house of Pratap, accused, from there in the night itself they left for some other place, thereafter, accused/appellant along with Sonau returned and Maluram did not return. But during her court evidence she has not supported the version of the prosecution. She has stated that Maluram did not come to their house. Other evidence of PW-4 Devlal has been pressed into service in order to establish that deceased Maluram was seen alive just before his death with the accused/appellant. In order to connect the accused with the crime on the basis of last seen theory, the settled law on the point is that time gap between when body of the deceased was found and when he was last seen alive with the accused must be so small and death and last seen must be so proximate from which an irresistible inference can be drawn that the accused was author of the crime in question. There should not be any possibility of coming any third person in between last seen and when body was found. The above principle has been laid down by the Apex Court in the matter of **BODHRAJ ALIAS BODHA AND OTHERS Versus STATE OF JAMMU & KASHMIR** reported in **(2002) 8 SCC 45.** In the matter of **Subhash Chand Vs. State of Rajasthan** reported in **(2002) 1 Supreme Court Cases 702** the Hon'ble Apex Court held that:

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(39)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

".....To constitute evidence of last seen together, the evidence must definitely permit an inference being drawn that the victim and the accused were seen together at a point of time in close proximity with the time and date of commission of crime...."

9. **In the matter of State of Karnataka Vs. M.V. Mahesh reported in (2003) 3 Supreme Court Cases 353 the Hon'ble Apex Court held that:**

"..... Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that Beena had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together...."

10. **In the present case, Devial (PW-4) has stated that in the house of Balsingh there was some last rites ceremony. All the villagers came there. Maluram was also there along with Pratap. They took meal at about 12 noon. Thereafter, Maluram left along with Pratap. On Friday there was news that Maluram has died. Evidence of this witness does not inspire confidence for the reason that other witness namely, PW-3 Laxman has stated that in the last rites ceremony in the house of Sonuram there was dinner. In the night people took their meal and thereafter they left. Maluram was also present and after taking his meal he left. PW-3 has not stated that accused Pratap was with Maluram. PW-5 Dabsingh has stated that in the night he along with**

(A10)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Maluram, Ratan and Mehruram took meal. He asked Maluram to go to village, then he said that he will come later on. He has not stated that the accused was with Maluram. Therefore, other witnesses have not stated that they saw Maluram with Pratap. Moreover, they have stated that they took meal in the night and not in the noon whereas, Devlal (PW-4) has stated that they saw Pratap and Maluram at Balsingh's house in the noon. Apart from that, in cross-examination, it has come that this witness had animosity with the accused/appellant. There is no evidence that after taking meal in the house of Balsingh to which side Pratap and Maluram had left. Therefore, there is no definite clinching legally admissible evidence on record that deceased Maluram was last seen alive with the accused just before his death nearby place where his body was found. Hence, based on this evidence, the accused cannot be connected with the crime in question.

11. The trial Court has also relied upon the evidence of PW-10 Samaru regarding motive. Perusal of the evidence of this witness reveals that there is nothing to show that the accused had motive to commit murder of the deceased. The other aspect on which the trial Court has relied upon is the evidence of PW-7 Shivprasad and PW-11 Pritram that Phoolbati, wife of the accused, told that the deceased was along with the accused but PW-1 Phoolbati, as has been mentioned earlier, has categorically denied this fact. PW-7 Shivprasad and PW-11 Pritram themselves have not seen the accused with the deceased. Therefore, in this case, there is no evidence to connect the accused with the crime in question. Accordingly, conviction and sentence imposed upon

XI-78

(41)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the accused/appellant for commission of offence under Section 302 of the I.P.C,. cannot be sustained.

12. In the result, the appeal succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside. He is acquitted of the said charge. It is stated that the accused is in detention from the date of judgment i.e. 22nd August, 2000, therefore, he be set at liberty forthwith unless required to be detained in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Bar